

1 **WAGANAKISING ODAWAK STATUTE #**
2 **PATERNITY AND CUSTODY**
3
4

5 **SECTION I. PURPOSE AND TITLE**
6

7 The purpose of this Statute is to provide for the custody and care of children born to unmarried
8 parents. The Tribe encourages the protection and preservation of the continuity of family, but
9 recognizes that in the event of a child born to parents that live separately or later become
10 separated, the care of the child needs to be established.
11

12 **SECTION II. DEFINITIONS**
13

14 A. “*Court*” means the Little Traverse Bay Bands of Odawa Indians Tribal Court.
15

16 B. “*Marriage*” means the legal and voluntary union of two persons to the exclusion of all
17 C. others.
18

19 D. “*Putative Father*” generally means a man whose legal relationship to a child has not
20 been established but who is alleged to be or claims that he may be the biological father of a child
21 who is born to a woman to whom he is not married at the time of the child’s birth.
22

23 E. “*Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians*” means
24 “*areas referenced in Public Law 103-324, 25 USC Section 1300k-2(b)(2)(A) as the boundaries*
25 *of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ‘third*
26 *and fourth’ of the Treaty of 1855, 11 Stat.621.*” Little Traverse Bay Bands Constitution, Article
27 V(A)(1)(a).
28

29 F. “*Tribe*” means the Little Traverse Bay Bands of Odawa Indians.
30
31
32

1 **SECTION III. JURISDICTION**

2
3 The Court shall have jurisdiction over child custody, child support, and visitation where at least
4 one (1) party to the proceedings is a Tribal Citizen of the Little Traverse Bay Bands of Odawa
5 Indians and has been a bona fide resident of the Tribal Jurisdiction for a period of at least one
6 hundred eighty(180) days prior to the filing of the action.
7

8
9 **SECTION IV. AUTOMATIC CUSTODY**

10
11 An unmarried mother, who gives birth to a child, shall have full legal and physical custody from
12 the time the child is born, unless the Putative Father has established paternity.
13

14 **SECTION V. ESTABLISH PATERNITY**

15
16 The Putative Father may establish paternity by any of the following:
17

18 **1.** He and the child's mother are or were married to each other, and the child is born
19 during the marriage or within three hundred (300) days after the marriage ended.
20

21 **2.** Before the birth of the child, he and the child's mother attempted to marry, and
22 the marriage is or could be declared invalid, and the child is born during the marriage or
23 within three hundred (300) days after the marriage is terminated.
24

25 **3.** With his consent, he is listed as the father on the child's birth certificate.
26

27 **4.** He has acknowledged his paternity in writing by and has signed an Affidavit of
28 Parentage at the time of the baby's birth or shortly afterward, along with the mother's
29 signature.
30

31 **5.** While the child is a minor, he has resided with the child and openly claimed the
32 child as his biological child.
33

1 **SECTION VI. CHILD CUSTODY, VISITATION AND SUPPORT**

2
3 **A.** After paternity is established, the Court shall have the authority to determine the custody
4 of any children under eighteen (18) years of age. The Court shall have jurisdiction to award
5 custody of the minor children to one of the parents or to a third person.
6

7 **B.** The Court may grant custody to one (1) parent, or may grant joint custody. The court
8 shall specify the period(s) when each parent shall have custody and shall determine the visitation
9 rights (if any) of the non-custodial parent. The Court shall determine custody in accordance with
10 the best interest of the child and shall consider all relevant factors including:
11

- 12 **1.** the wishes of the child(ren)'s parent or parents as to the custody;
13
- 14 **2.** the wishes of the child(ren) as to custody, provided that the child(ren) are of
15 sufficient age to exercise discretion. These wishes may be weighed by the Court, but are
16 not controlling to the Court's decision. The Judge will meet with the child(ren) in his or
17 her chambers to discuss the child(ren)'s wishes;
18
- 19 **3.** the interaction and interrelationship of the child with his or her parent or parents,
20 siblings and any other person who may significantly affect the child's best interest;
21
- 22 **4.** the child's adjustment to his or her home, school and the tribal community;
23
- 24 **5.** the mental and physical health of all individuals involved;
25
- 26 **6.** the capacity and disposition of the custodian parent to allow the child frequent
27 and continuing contact with the non-custodial parent(s) and the child(ren) whenever
28 possible.
29

30 **C.** The Court shall not consider conduct of a proposed custodian that does not affect his or
31 her relationship to the child.
32

- 1 **D.** The Court shall have no presumption that one parent is better suited to be a custodian
2 because of gender.
3
- 4 **E.** Differences in financial circumstances alone shall not be a deciding factor in the
5 determination of custody.
6
- 7 **F.** The Court shall have the authority to require the non-custodial parent to pay such sum as
8 the Court may determine appropriate and proper for the support and maintenance of the
9 child(ren).
10
- 11 **G.** The Court shall designate visitation for the non-custodian parent or parent(s) and shall
12 provide for the foster and expansion of the relationship between the non-custodial
13 parent(s) and the child(ren) whenever possible, unless the Court finds, after a hearing,
14 that visitation would endanger seriously the child's physical, mental or emotional health.
15
- 16 **H.** The Court, upon petition of either party, or any third party to whom custody or visitation
17 of the minor child(ren) may be awarded, may revise, amend or alter any order concerning
18 the care, custody, support or visitation rights with any minor child(ren) consistent with
19 the best interests of the child or children.
20
- 21 **I.** Changes in domicile where the custodial parent wants to move out-side of the Tribal
22 Territorial Jurisdiction, shall require prior Court approval. The Court shall consider the
23 following factors:
24
- 25 1. consent of both parents;
26
- 27 2. prospective advantages of the move for improvement of the general quality of life
28 for the custodial parent and child(ren);
29
- 30 3. the likelihood of the custodial parent complying with the Tribal Court Order once
31 he or she in no longer resides within the Tribal Territory;
32
33

1 4. the extent to which there will be a realistic opportunity for non-custodial visitation
2 which can continued to foster the relationship between the non-custodial parent(s) and the
3 child(ren).
4

5 **J.** Both custodial and non-custodial parents shall notify the Court of any changes in
6 domicile or residency.
7

8 **K.** When the Court has ordered periodic support payments under this code, and the parent
9 does not pay as ordered, the Court shall use the same methods to collect these payments as it
10 would to enforce any money judgment in a civil action, including contempt.
11

12
13 **SECTION IX. TEMPORARY INTERIM ORDERS**
14

15 **A.** The Court may issue temporary orders during the pending of all proceedings involving
16 child custody, child support, and visitation.
17

18 **B.** Such orders may be granted upon the motion of either party or on the Court's own
19 motion. A hearing shall be held prior to the issuance of such orders, unless the Court determines
20 that an emergency exists or a party cannot be found, in which case such orders may be issued ex-
21 parte.
22

23 **C.** Emergency may be interpreted to include, but not limited to:
24

- 25 1. a danger of physical abuse to the spouse or the parties child(ren);
26
27 2. severe emotional abuse;
28
29 3. a lack of means for interim subsistence; or
30
31 4. the danger that the child(ren) will be removed from jurisdiction.
32

1 **D.** If the initial order is issued ex-parte, a full hearing on the temporary order shall be held
2 within fourteen (14) days.
3
4

5 **SECTION X. ENFORCEMENT**
6

7 When either party to a proceeding shall fail willfully to comply with an order of the Tribal Court,
8 the other party may file a petition with the Court alleging such failure. The Court shall then issue
9 notice to the party, which shall include a copy of the petition, and set a date for the hearing. At
10 the hearing, the Court shall take testimony as to the alleged failure to comply with its order, and
11 issue any order which it shall deem just and proper under the circumstances
12
13

14 **SECTION XI. SAVING CLAUSE**
15

16 In the event that any phrase, provision, part, paragraph, subsection or section of this statute is
17 found by a court of competent jurisdiction to violate the Constitution, laws, ordinances or
18 statutes of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part,
19 paragraph, subsection or section shall be considered to stand alone and to be deleted from this
20 statute, the entirety of the balance of the statute to remain in full and binding force and effect.
21
22

23 **SECTION XII. EFFECTIVE DATE**
24

25 Effective upon signature of the Executive or 30 days from Tribal Council approval which ever
26 comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the
27 veto.
28

29 **CERTIFICATION**
30